

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

REBOOT MACON, LLC, et al.,)	
)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO. 5:21-CV-221 (MTT)
)	
UNITED STATES OF AMERICA, et al.,)	
)	
)	
Defendants.)	
)	

ORDER

In Plaintiffs' response to the Government's motion to dismiss,¹ Plaintiffs move the Court to convert the Government's motion (Doc. 16) to a motion for summary judgment with the parties being given an additional period to conduct discovery. Doc. 23. The Government's motion argues dismissal is warranted under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Doc. 16. In support of that motion, the Government introduced a Declaration from John A. Miller, the Small Business Administration's Deputy Associate Administrator for Capital Access. Doc. 16-2. In turn, Plaintiffs introduced an Affidavit in support of their response (Doc. 23-1) from Whitney Boyer, the majority owner of Reboot Macon, LLC, and Per Diem Market, LLC. Doc. 23-2.

¹ Plaintiffs in this consolidated action consist of Reboot Macon, LLC, and Per Diem Market, LLC. Doc. 13. Confusingly, Plaintiffs' motion is titled "Objection to Plaintiff's Motion to Dismiss and Motion for Discovery." Doc. 23. Nonetheless, the contents of Plaintiffs' motion and supporting brief (Doc. 23-1) object to Defendant's motion to dismiss. See generally Docs. 23; 23-1. In short, the title of Plaintiffs' motion appears to be in error.

Courts generally do not consider matters outside the pleadings on a Rule 12(b)(6) motion to dismiss. *Grossman v. Nationsbank, N.A.*, 225 F.3d 1228, 1231 (11th Cir. 2000). Accordingly, the Court **ORDERS** the Government to respond to Plaintiffs' motion (Doc. 23) and explain its position on whether the Government's motion to dismiss (Doc. 16) should be converted into a motion for summary judgment. This brief shall be filed separately from the Government's reply, and due no later than January 28, 2022.

SO ORDERED, this 6th day of January, 2022.

S/ Marc T. Treadwell
MARC T. TREADWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT